



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 01405-00

29 June 2000

EN1 [REDACTED] USN

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Deputy Chief of Naval Operations dated 14 June 2000 with enclosure, and the Navy Personnel Command dated 22 June 2000, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions. In finding the contested performance evaluation should stand as is, the Board was unable to find the reporting senior did not take due account of your medical problem in connection with your bicycle accident. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

14 Jun 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO PETTY
OFFICER [REDACTED] USN [REDACTED]

Encl: (1) NAVPERS 1221/1 OF 8 MAY 2000

1. The following recommendation concerning the subject matter is provided.
2. The petitioner is requesting reinstatement of NEC 5342 and his Evaluation Report for the period of 98NOV15 to 99NOV15 be changed.
3. The petitioner failed to qualify as Dive Supervisor in accordance with his command's directives. While his previous Evaluation Reports incorrectly reference MILPERSMAN Article 1220-100 (formerly 1410380), it is the Commanding Officers right to require personnel to complete PQS and take administrative action if they fail to do so.
4. After submission of this petition, the petitioner apparently qualified in accordance with command directives and enclosure (1) reinstated his NEC 5342.
5. The members NEC has been restored. The Evaluation Report in question was correct at the time of submission. The member may request the Reporting Senior to change his Evaluation Report in accordance with BUPERSINST 1610.10.
6. Recommend the petition be denied.

[REDACTED]
[REDACTED] (ZOD), USN
DCNO N132D7A

NAVY ENLISTED CLASSIFICATION (NEC) CHANGE/RECOMMENDATION (Directions on Reverse Side)			REFERENCE NAVPERS 18068F VOLUME II	
TO: [REDACTED]	SERIAL: [REDACTED]	DATE: [REDACTED]		
VIA:	1. SOCIAL SECURITY NO. [REDACTED]			
FROM: [REDACTED]	2. NAME (LAST, FIRST, MI.): [REDACTED]			
	3. RATE/RATING: [REDACTED]	4. COMPONENT: <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> RESERVE		
	5. RESERVE CLASSIFICATION: <input type="checkbox"/> TAR <input type="checkbox"/> OTHER <input type="checkbox"/> SELRES			
6. NEC ACTION RECOMMENDATION:				
<input type="checkbox"/> AWARD OF NEC: <input type="checkbox"/> CHANGE OF DISTRIBUTABILITY: <input checked="" type="checkbox"/> RESTORE DISTRIBUTABILITY:				
<input type="checkbox"/> ON THE JOB TRAINING <input type="checkbox"/> FAILURE TO RECERTIFY <input type="checkbox"/> COMPLETED RECERTIFICATION				
<input type="checkbox"/> CIVILIAN JOB EXPERIENCE <input type="checkbox"/> SUBSTANDARD PERFORMANCE <input checked="" type="checkbox"/> PROVEN PERFORMANCE				
<input type="checkbox"/> COURSE COMPLETION <input type="checkbox"/> DROPPED FROM PRP <input type="checkbox"/> REINSTATED IN PRP				
NOTE: IF AWARDED AN NEC BASED ON COURSE COMPLETION, COMPLETE APPROPRIATE PARTS OF BLOCK 7 BELOW. <input type="checkbox"/> LOSS OF SECURITY CLEARANCE <input type="checkbox"/> SECURITY CLEARANCE REINSTATED				
<input type="checkbox"/> MEDICAL REASONS <input type="checkbox"/> MEDICAL REASONS				
<input type="checkbox"/> NON-VOLUNTEER <input type="checkbox"/> OTHER (EXPLAIN BELOW)				
7. NEC AND COURSE INFORMATION:				
NEC	CDP	CIN	COURSE COMPLETION DATE (YYMM)	RECOMMENDED AWARD/CHANGE DATE YYMM
5342				0003
R-TRACK				
(USNR-R ONLY)				
8. ADDITIONAL JUSTIFICATION:				
Member's NEC (5342) was removed 07 JUNE 1999 due to substandard performance. Member has demonstrated proven performance as a first class diver (NEC 5342). This command is recommending that his NEC of 5342 be restored.				
Eff. Date 8 MAY 00 [Signature]				
9. CLASSIFICATION COORDINATOR (USNR-R Only)		DATE	10. [REDACTED] DATE	
			9 MAY 00	
11. FIRST ENDORSEMENT				
FROM: GO, ENLISTED PERSONNEL MANAGEMENT CENTER (CODE 42)				
<input type="checkbox"/> APPROVED: Page 4 Service Record entry is to be made upon receipt.				
<input type="checkbox"/> DISAPPROVED				



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

140500
1610
PERS-311
22 June 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests to change blocks-33, 37, and 43 on his performance evaluation for the period 16 November 1998 to 15 November 1999 and the lowering of his NEC be stricken from his record.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the performance evaluation in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member did not desire to submit a statement. Per reference (a), Annex S, Paragraph S-8, the member has two years from the ending date of the report to submit a statement.

b. The member alleges the performance trait grades assigned and the lowering of his NEC was a form of punishment. Evaluation of a member's performance and making recommendation concerning promotion and assignments is the responsibility of the reporting senior. In viewing petitions that question the exercise of the evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. We must determine if there is any rational basis to support the reporting senior's decision, and whether the reporting senior's actions were the result of improper motives. Therefore, for us to recommend relief, the petitioner has to demonstrate that the reporting senior did not properly exercise his/her authority and the petitioner must show that there is no rational support for the reporting senior's action or that the reporting senior acted for illegal or improper purposes. The petitioner must do more than just assert the improper exercise of discretion, he must provide reasonable evidence to support the claim. I do not believe Petty Officer [REDACTED] did so. The member has provided nothing other than his assertion.

1405-00

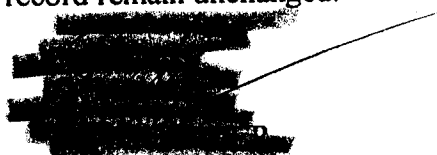
c. We cannot administratively make the requested changes on a performance evaluation. Only the reporting senior who signed the original report may submit supplementary material for file in the member's record.

d. The evaluation appears to be procedurally correct. The reporting senior is charged with commenting on the performance or characteristics of an individual under his/her command and determines what material will be included in a performance evaluation. The evaluation represents the judgment and appraisal authority of the reporting senior.

e. Enhancement of promotion opportunity does not justify changing the evaluation report.

f. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

A large, dark, rectangular redacted area covering a signature. A thin line extends from the right side of the redaction.

Head, Performance
Evaluation Branch